IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 4TH JUNE 2007 / 14TH JYAISHTA 1929

WP(C).No. 16866 of 2007(G)

OS.327/2003 of PRL.SUB COURT, KOZHIKODE

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PETITIONER:

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1. P.KADEESA, D/O. ANDRU HAJI,
   RESIDING AT PUTHUKKUDIKANDIYIL,
   VILLIAPPALLY AMSOM DESOM, VADAKARA TALUK.

2. NAJIMA, D/O. KUNHAMMED,
   P.O.CHERAPURAM, VIA. KAKKAT.

3. RAMATH FOUSIYA, D/O. KUNHAMMED,
   P.O.KOTTAPPALLY, VIA. VILLIAPPALLY.

4. PUTHUKKUDIKANDIYIL NOUFAL, (MINOR),
   AGED 16 YEARS, REPRESENTED BY HIS MOTHER
   1ST PETITIONER, S/O. KUNHAMMED.

5. PUTHUKKUDIKANDIYIL SAFIYA, (MINOR),
   AGED 13 YEARS, REPRESENTED BY HER MOTHER
   1ST PETITIONER, D/O. KUNHAMMED.

6. PATHU, W/O. KUNHABDULLA HAJI,
   RESIDING AT PUTHUKKUDIKANDIYIL

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

KUNNOTH KUNHABDULLA, S/O. KUNNOTH
MAMMU, RESIDING AT 'AL HILAL', EDAROTTU
THAZHAKUNIYIL, VILLIAPPALLY AMSOM DESOM,
VADAKARA TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No.16866 OF 2007 G

Dated this the 4th June, 2007.

JUDGMENT

This is an application filed to quash Ext.P6 order. The suit is one for partition and as per the decree the plaintiff is entitled to one out of two shares and the defendants are jointly entitled to the remaining half share in the property. The extent of the property is about 12 cents with a building. A commissioner who inspected the property found that it is very difficult to divide the property by metes and bounds and therefore it was decided to sell the property in auction. The writ petitioners initially averred that they are not having the capacity to participate in an auction among sharers and therefore wanted the court to have a public auction. The court did not agree with that proposal and therefore directed the Commissioner to submit a valuation report so as to direct the plaintiff to take the property for valuation. Thereafter, I think the defendants grew wiser and have filed an application to record the objection in the commissioner's report and submitted that the property will fetch much more higher value than what is estimated by the Commissioner. The trial court said that evidence can be let in by the present petitioners and if necessary the

Commissioner can go back or the matter can be disposed of depending upon the present report of the Commissioner.

2. Now, at the time of hearing, the learned counsel for the writ petitioners submits that his clients are prepared to bid the property in the auction conducted among sharers. As far as partition sales are concerned it is always desirable that initially an attempt should be made to sell the property among the sharers for a proper consideration and in case the court finds that the value offered is so inadequate or that it cannot be sold in auction among sharers then only it has to go to the next stage of public auction or appoint a commissioner to fix the value of the property. The writ petitioners have changed their stand now and are agreeable for an auction among sharers it is one of the most feasible methods in a suit for partition. I do not want to shut out that opportunity.

3. Therefore, the writ petition is disposed of directing the present writ petitioners to file an application before the trial court to conduct the auction among sharers after fixing a reasonable upset price and the auction be conducted in court thereby permitting both the plaintiff and defendants to participate in the auction and the highest bidder be permitted to deposit the amount after

setting off his or their half share and get the property.

4. The writ petitioners are permitted to file the application within one month and till that time the final decree court is directed not to proceed further with the sale of the property.

M.N. KRISHNAN
Judge

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